

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Donald Brownlee,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case Nos: 13A 008, 13A 009, & 13A 010

Decision and Order Affirming the  
Determinations of the Otoe  
County Board of Equalization

**Procedural Background**

1. A Single Commissioner hearing was held on June 12, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
2. Donald Brownlee (the Taxpayer) and Kenneth Hartman were present at the hearing for the Taxpayer.
3. David Partsch, Otoe County Attorney, John Palmtag, Deputy Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christi Smallfoot, Deputy Otoe County Assessor were present for the Otoe County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) consists of three separate agricultural and horticultural parcels, each located in Section 33, Township 8, Range 9, in Otoe County, Nebraska. The parcel in Case No. 13A 008 consists of 200 acres. The parcel in Case No. 13A 009 consists of 80 acres. The parcel in Case No. 13A 010 consists of 40 acres. The legal descriptions of the Subject Property are in the Case Files.

Case No. 13A 008

5. The Otoe County Assessor (the Assessor) assessed the Subject Property at \$554,760.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$483,890.
7. The County Board determined that the taxable value of the Subject Property was \$554,760.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Case No. 13A 009

9. The Assessor assessed the Subject Property at \$190,570.
10. The Taxpayer protested this value to the County Board and requested an assessed value of \$149,442.
11. The County Board determined that the taxable value of the Subject Property was \$190,570.
12. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Case No. 13A 010

13. The Assessor assessed the Subject Property at \$90,350.
14. The Taxpayer protested this value to the County Board and requested an assessed value of \$71,978.
15. The County Board determined that the taxable value of the Subject Property was \$90,350.
16. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

### **Applicable Law**

17. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>1</sup> "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."<sup>2</sup>
18. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>3</sup> That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."<sup>4</sup>
19. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup>
20. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
21. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
22. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### **Analysis**

23. The Taxpayer did not dispute the determination of value of the residential improvement or outbuildings in Case No. 13A 008.

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<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>2</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

24. David Brownlee asserted that the increases in the assessments of the Subject Property were too high from tax year 2012 to tax year 2013. He asserted that there was a 43% increase for the 200 acres in Case No. 13A 008, a 45% increase for the 80 acres in Case No. 13A 009, and a 46% increase for the 40 acres in Case No. 13A 010 from the assessments in tax year 2012 to tax year 2013. He asserted that the average increase in assessments for the entire county for the same tax years was 19%.
25. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup> It follows that the percentage increase from the prior year assessment is not determinative of the subsequent year's assessed valuation.
26. Property Record Cards provided by the parties indicate that the Subject Property was valued uniformly with other parcels of agricultural land and horticultural land in the same taxing jurisdiction. Each acre of the agricultural land and horticultural land was assigned a land capability group (LCG).<sup>11</sup> Each acre of the Subject Property per LCG was valued at the same amount per acre as the comparable land.
27. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
28. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**ORDER**

IT IS ORDERED THAT:

1. The Decisions of the Otoe County Board of Equalization determining the taxable values of the Subject Property for tax year 2013 are Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is:

Case No. 13A 008

Land	\$ 471,060
Improvements	<u>\$ 83,700</u>
Total	\$ 554,760

Case No. 13A 009

Land	\$ 190,570
Improvements	<u>\$ 0</u>
Total	\$ 190,570

<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

<sup>11</sup> Land capability groups are "groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification." 350 Neb. Admin, ch. 14 §002.41 (03/09).

Case No. 13A 010

Land	\$ 90,350
Improvements	<u>    0</u>
Total	\$ 90,350

3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013.
7. This Decision and Order is effective on June 20, 2014.

Signed and Sealed: June 20, 2014

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Robert W. Hotz, Commissioner